IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/08/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 35947 of 2002 and Writ Petition NO. 42105 of 2002

Angammal. ..Petitioner in W.P.No.35947/2002.

Munusamy ..Petitioner in W.P.No.42105/2002.

-Vs-

1. The Special Tahsildar,
Land Acquisition, Housing,
Ranipet.

2. The Executive Engineer,
Tamil Nadu Housing Board,
Vellore. .. Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writs of Mandamus, as stated therein.

For petitioner in both W.Ps. :: Mr.R. Margabandhu

For Respondents in both W.Ps. ::Mr. S. Gomathinayagam,
Special Govt., Pleader:

:COMMON ORDER

Since the issue raised in both the Writ Petitions is one and the same, they are being disposed of by the following common order. In Writ Petition No. 35947 of 2002, the petitioner seeks to issue a Writ of Mandamus, directing the respondents to make reference under Section 18 of the Land Acquisition Act for the lands acquired in S. No. 61/9 0.38 Cents, 61/8 0.22 Cents in Seekarajapuram, which form part of Award No.5 of 88 dated 14-9-1988 to the file of the Sub Court, Ranipet.

2. In Writ Petition No. 42105 of 2002, the petitioner has prayed for issuance of similar Mandamus, directing the respondents to make a reference

under Section 18 of the Land Acquisition Act in respect of lands in Seekarajapuram S.No.61/9 0.22= Cents, 66/2 0.10 Cents acquired under Award No. 5/88 dated 1-9-88.

3. Heard Mr. R. Margabandhu, learned counsel for the petitioners and the learned Special Government Pleader for respondents.

4 (i). Learned counsel for the petitioners, after taking me through the Award proceedings, would contend that inasmuch as the petitioners had participated in the Award proceedings, raised their objections and received the amount determined by the Tahsildar under protest, the first respondent is bound to make a reference under Section 18 of the Land Acquisition Act, 1894 to the Subordinate Court for determination of proper compensation. He also contended that in the light of the fact that the Tahsildar himself referred to the fact that reference will be sent to the Principal Subordinate Judge under Section 18 of the said Act to decide compensation as per Rules, the Tahsildar ought to have referred the matter to the competent Sub Court. He further contended that inasmuch as copy of the award proceedings has not been communicated to the petitioners, their claim cannot be rejected on the ground of delay.

(ii) On the other hand, learned Special Government Pleader, by pointing out Section 18 (1) of the Land Acquisition Act, would contend that in the absence of written application to the Tahsildar/ Collector concerned and in view of the fact that the copy of the award has been communicated, the present request of the petitioners cannot be acceded to and both the writ petitions are liable to be dismissed.

5. I have carefully considered the rival submissions.

6. In the light of the limited issue raised, it is unnecessary for me to refer the details regarding acquisition of the lands in question. The fact remains that both the petitioners are the land owners whose lands were sought to be acquired for the public purpose. A perusal of award proceedings (filed in the typed-set of papers) shows that the petitioner in W.P.No. 35947 of 2002 and the petitioner in W.P.No. 42105 of 2002 are the owners of the lands in S.No.6 1/9 0.38 Cents, 61/8 0.22 Cents; and lands in S.No.61/9 0.22= Cents, 66/2 0.10 Cents in Seekarajapuram respectively. In the objection raised during the award proceedings, both the petitioners have specifically stated that the amount arrived by the Collector is very low and prayed for higher compensation at the rate of Rs.2,500/- per Cent. In the same objection, it is stated that they are willing to receive the compensation under protest. For the sake of repetition, I am saying that these factual details are available in the award proceedings itself. It is also relevant to note that after fixing valuation, the Special Tahsildar and Land Acquisition Officer has stated that reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") will be sent to the Principal Subordinate Judge to decide the compensation as per Rules. Learned Special Government Pleader, by drawing my attention to Section 18 of the Act, vehemently contended that in the absence of written application to the Tahsildar-Collector seeking higher compensation, no direction can be issued at this stage for reference under Section 18 of the Act. In order to appreciate

the said contention, it is useful to refer Section 18 of the Act:-

"18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-
(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

It is true that as per sub-section (1) of Section 18, a person who has not accepted the award has to make a written application to the Collector/Special Tahsildar stating the grounds for reference. As per Proviso to sub-section (2), application has to be made subject to certain period as provided in Clauses (a) and (b). I had an occasion to consider similar question in M.P. Palani and others v. State of Tamil Nadu and others, reported in 1999 Writ L.R. 760. After referring to the award proceedings therein, Section 18 of the Act, and a Division Bench decision of this Court in Ramalakshmi Ammal, T.A.K.M. v. The Revenue Divisional Officer (1985 Writ L.R.504), as well as

an unreported decision of J. Kanakaraj, J., in Writ Petition No. 12670 of 1987 dated 28-03-1994 (K.A. Sulaiman v. The Government of Tamil Nadu and another), I have held as follows: (para 5)

"5. In view of Sections 12 (2) and 18 (2) of the Land Acquisition Act, 1894 and in the light of the specific assertion in the affidavit objecting to the fixation of lesser price for their lands and in the absence of any information by any of the respondents, I hold that unless the notice of award is accompanied by a copy of the award, it would not be effective notice within the meaning of Section 1 2 (2) of the Act. Likewise, if any statement is made during the award enquiry asking for higher compensation, the same may be treated as an application for reference, I also hold that if compensation is received under protest in such case also it is to be treated as an application for reference. In all these cases, undoubtedly, duty is cast on the Collector to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 for adjudication. In this view of the matter, there will be a direction to the respondents to make a reference under Section 18 of the Land Acquisition Act, 1894 in so far as the petitioners are concerned in respect of subject Award No.4 /87 dated 26-4-89 within a period of three months from the date of receipt of a copy of this Order. Writ Petition is

allowed in the above terms...."

The decision referred to above is directly on the point and applicable to the case of the petitioners. Mr. R. Margabandhu, learned counsel for the petitioners, has also brought to my notice a decision of K.P. Sivasubramaniam, J., in Writ Petition Nos. 39876 to 39878 of 2002 dated 30-10-2002 (Subramanian and others v. Special Tahsildar, Land Acquisition, Housing, Ranipet and another). In similar circumstance, the learned Judge, after perusing the award proceedings and noting the statement made by the officer that reference under Section 18 of the Act will also be sent to the Principal Sub Court to determine the award of compensation, has concluded that "...It is needless to point out that when the claimants are seeking enhancement of compensation under the award, the concerned Authority is duty bound to refer the same." The learned counsel has also brought to my notice another decision of P.K. Misra, J., in Writ Petition No. 1853 of 1996 dated 5-12-20 01 (G. Ganesan v. District Collector, Vellore-9 and 2 others) wherein the learned Judge has taken a similar view and directed the acquisition Collector to make necessary reference to the concerned Sub Court. All the decisions referred to above support the case of the petitioners. As said earlier, I am aware of the language used in subsection (1) of Section 18 of the Act. In the light of the factual position, as evidenced from the award proceedings that both the petitioners have raised their objection regarding the quantum of compensation and received the amount under protest, the Officer concerned himself has expressed that necessary reference will be made to the Sub Court under Section 18. I am unable to appreciate the objection of the learned Special Government Pleader.

7. In the light of what is stated above, I accept the case of the petitioners. Accordingly, the first respondent herein is directed to make a reference under Section 18 of the Act with reference to the lands of the petitioners acquired which form part of Award No.5 of 88 dated 14-9-88 and 1-9-88 respectively to the concerned Sub Court within a period of four weeks from the date of receipt of a copy of this order. Writ Petitions are allowed. No costs.

R.B. 05-8-2003

To:-

1. The Special Tahsildar,
Land Acquisition, Housing,
Ranipet.

2. The Executive Engineer,
Tamil Nadu Housing Board,
Vellore.